

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

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|---|---|--------------------------|
| Bennie Austin Mack, Jr. |) | C/A No. 9:09-2891-JFA-BM |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| D. Drew; P. Jenkinson; Ms. Stonebreaker; R.E. Holt; |) | |
| and Yvonne Hinkson, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The *pro se* plaintiff, Bennie Austin Mack, Jr., was a detainee at the Federal Correctional Institution in Bennettsville, South Carolina at the time this action was filed pursuant to 42 U.S.C. § 1983.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation and opines that the complaint should be dismissed for failure to prosecute, in accordance with Fed.R.Civ.P. Rule 41(b). The Magistrate Judge notes that the plaintiff was advised to keep the court apprised of his current address and that the plaintiff failed to do so when an order of the court was returned to the Clerk by the U.S. Postmaster. The Magistrate Judge also directed the Clerk to mail a copy of this Report to the plaintiff allowing him fourteen (14) days to object to the Report and advise the court if he desired to continue with prosecution of this case.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1).

In his timely objections to the Report, the plaintiff explains that he has been transferred through four different federal correctional facilities since he filed this action on November 6, 2009. The plaintiff also asserts that he “went to extraordinary lengths to comply with the court’s directive regarding his numerous changes of address.” Plaintiff requests that he be allowed to proceed with this action.

The court has carefully reviewed the record, the applicable law, the Report and Recommendation, and the plaintiff’s objections thereto. Finding good cause for the plaintiff’s request not to dismiss this action, the court hereby vacates the Magistrate Judge’s recommendation and directs the Clerk to return the file to the Magistrate Judge for further handling.

IT IS SO ORDERED.

February 23, 2010
Columbia, South Carolina

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge